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First Named Applicant: Yukie)	Art Unit: 3628
)	
Serial No.: 09/542,139)	Examiner: Bui
)	
Filed: April 4, 2000)	SOP 3859.02
)	
For: SYSTEM AND METHOD FOR PROVIDING)	May 16, 2005
PUBLICLY VENDED CONTENT VIA A WIRELESS)	750 B STREET, Suite 3120
NETWORK)	San Diego, CA 92101
)	

SECOND APPEAL BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This brief is submitted under 35 U.S.C. §134 and is in accordance with 37 C.F.R. Parts 1, 5, 10, 11, and 41, effective September 13, 2004 and published at 69 Fed. Reg. 155 (August 2004). This brief is further to Appellant's Notice of Appeal filed herewith.

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(1) Real Party in Interest

The real party in interest is Sony Corp.

(2) Related Appeals/Interferences

No other appeals or interferences exist which relate to the present application or appeal.

(3) Status of Claims

Claims 1-5, 8, 10, 12-17, 22, 24, 26, and 29-35 are pending and finally rejected, and the remaining claims canceled.

(4) Status of Amendments

No amendments are outstanding.

(5) Concise Explanation of Subject Matter in Each Independent Claim, with Page and Figure Nos.

As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 49976. Accordingly, nothing in this Section should be construed as an estoppel that limits the actual claim language.

As set forth in Claim 1, the invention is a computer system (10, figure 1, page 6, first paragraph) that has a computer network path, at least a portion of which is wireless (page 8, lines 17-19). A user terminal (32, figure 1, *id.*) is in the path and a connect server (26, figure 1, page 8, line 8) communicates

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with the user terminal to receive requests for content from the user terminal by accessing a database of publicly vended content (14, figure 1, page 7, lines 19-22). A billing module (30, figure 1, page 8, line 16) accessible to the connect server generates accounting data based on each request for content received, and/or each piece of content delivered to the user terminal, and/or a content subscription, and/or a type of user terminal, and/or a number of IP packets delivered to the user terminal (page 14, lines 1-9).

The reference numerals above in relation to the summary of Claim 1 are incorporated herein. Claim 12 sets forth a method for vending content that includes rendering the content in a digitized format, and making the content available on a computer network. The method also includes establishing at least one network path between the network and a user terminal, with at least a portion of the path being a private wireless path. The content is sent to the user terminal via the network path, and accounting data is generated that is representative of the provision of content to the user terminal. The accounting data is based on at least one of a number of packets delivered to the user terminal, and a type of the user terminal.

The reference numerals above in relation to the summary of Claim 1 are incorporated herein. Claim 24 sets forth a computer program device (e.g., module 30) that includes computer program storage device readable by a digital processing apparatus (e.g., the connect server 26). A program on the program storage device includes instructions executable by the digital processing apparatus. The program includes (as shown in various blocks in the flow charts, representing the structure of computer code), computer readable code means for billing a user for the provision of digitized packetized audio or video content from the Internet via a wireless network path to a user terminal associated with the user, including at least one of: means for receiving a request for a piece of content from the user, the means for billing generating accounting data based at least in part on the request, means for generating accounting data based at least in part on a number

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of packets sent to the user via the path, means for generating accounting data based at least in part on a content subscription for content, and means for generating accounting data based at least in part on a type of user terminal.

(6) Grounds of Rejection to be Reviewed on Appeal

Claims 1-5, 8, 10, 12-17, 22, 24, 26, and 29-35 have been rejected under 35 U.S.C. §102 as being anticipated by Hylton et al., USPN 5,708,961.

(7) Argument

As an initial matter, it is noted that according to the Patent Office, a new ground of rejection in an examiner's answer should be "rare", and should be levied only in response to such things as newly presented arguments by Applicant or to address a claim that the examiner previously failed to address, 69 Fed. Reg. 155 (August 2004), see, e.g., pages 49963 and 49980. Furthermore, a new ground of rejection must be approved by the Technology Center Director or designee and in any case must come accompanied with the initials of the conferees of the appeal conference, id., page 49979.

Appellant would like to further point out that this application has been appealed (in 2003) and the Patent Office has already reopened it once, churning prosecution, consuming the patent term, and inflicting costs on Appellant. Accordingly, short circuiting the appellate process by reopening prosecution yet again instead of either allowing the application to issue or to proceed to the Board understandably will be viewed in an exceptionally dim light and will precipitate a request for an explanation by the Group Director.

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The rejections of the independent claims specifically rely on col. 25, lines 39-48, col. 26, lines 9-38 and line 63 continuing to col. 27, line 14, col. 37, lines 29-40, col. 40, lines 38-48, col. 43, line 65 to col. 44, line 9.

Considering first independent Claims 12 and 24, the accounting data must be generated using one or both of the type of user terminal, and number of IP packets delivered to the user terminal. This accounting paradigm appears nowhere in the relied-upon sections of Hylton et al., which appears to envision billing using conventional pay-per-view billing or cable subscription billing. Indeed, in the sections newly cited in the last Office Action, namely, at col. 25, lines 39-48, col. 26, lines 9-39, col. 37, lines 38-48, and col. 40, lines 38-48, those are the only two billing paradigms that are evident to Appellant. These are independent of type of user terminal and of number of packets delivered.

So why has this appeal been forced? Because of the illogic behind the following rationale: "these functions are steps or means for generating billing or accounting data based on the type of user terminal and number of packets...the video programs may be [in IP packets]".

In other words, the examiner's rationale is based on an easily recognizable false syllogism, namely, that because Hylton et al. bills for video, and that because the video can be in packets and is received over particular types of user terminals, then Hylton et al. therefore bills based on packets delivered and/or type of receiver. The illogic is that the conclusion of the syllogism does not flow from the major and minor premises. It is entirely possible (indeed, it is in fact the truth) that Hylton et al., while delivering video potentially in packets to receivers that have some sort of generic type, generates billing without any regard for either. And indeed, Hylton et al. clearly teaches pay-per-view billing and rather more opaquely suggests

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subscription-based billing, but nowhere mentions the billing paradigms of Claims 12 and 24. Neither the examiner's logic nor the actual teachings of Hylton et al. support the rejections.

With respect to Claim 1, nowhere does the Office Action mention the limitation of Claim 1 that the connect server accesses a database of publicly vended content. The examiner points to element 5 of Figure 1 as the "connect server" but this is a digital broadband network that may or may not include servers. Moreover, the Office Action alleges that element 5 accesses a database of public content, and relies for support on "figure 1 and col. 26", but no database is shown in figure 1 nor does any database, much less one that is accessed by the relied-upon "connect server", much less still one that contains public content, appear to be mentioned in col. 26.

Allegations have been levied *appropo* the limitations of dependent claims that are based on inaccurate readings of Hylton et al. For example, it is alleged that col. 38, lines 38-46 teach a directional wireless path as recited in Claim 2, but that simply is untrue. All the relied-upon portion of Hylton et al. teaches is that when a set-top box is energized, it gets assigned a "DS3" and a signalling channel.

The allegation that space division multiple access (SDMA) as recited in Claim 14 is taught at col. 6, line 44 to col. 7, line 34 is factually incorrect. Direct sequence CDMA (DS-CDMA) and frequency-hopping CDMA (S/F FH-CDMA) as taught in the relied-upon sections are not the same communication method as SDMA, simply because many of the same letters happen to be used in the acronyms.

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APPENDIX A - APPEALED CLAIMS

1. A computer system, comprising:
a computer network path, at least a portion of which is wireless;
at least one user terminal in the path;
at least one connect server communicating with the user terminal, the connect server receiving requests for content generated from the user terminal, the connect server accessing a database of publicly vended content to fulfill the requests; and
at least one billing module accessible to the connect server for generating accounting data based on at least one of: each request for content received, each piece of content delivered to the user terminal, a content subscription, a type of user terminal, and a number of IP packets delivered to the user terminal.
2. The computer system of Claim 1, wherein at least a portion of the network path is a directional wireless path.
3. The computer system of Claim 2, wherein the directional wireless path has no telephony switches therein.
4. The computer system of Claim 1, wherein the content is provided to the user terminal over the network path in packets.
5. The computer system of Claim 4, wherein the packets are in IP protocol format.
8. The computer system of Claim 1, wherein the subscription is established at least in part by a user profile.
10. The computer system of Claim 1, wherein the billing module generates accounting data based at least in part on at least one time period.
12. A method for vending content, comprising the acts of:
rendering the content in a digitized format;
making the content available on a computer network;
establishing at least one network path between the network and a user terminal, at least a portion of the path being a private wireless path;
sending the content to the user terminal via the network path; and
generating accounting data representative of the provision of content to the user terminal;
wherein the accounting data is based on at least one of:
a number of packets delivered to the user terminal; and
a type of the user terminal.

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13. The method of Claim 12, wherein the private wireless path is a directional path.
14. The method of Claim 13, wherein the private wireless path is an SDMA path.
15. The method of Claim 13, wherein the wireless path has no telephony switches therein.
16. The method of Claim 13, wherein the content is provided to the user terminal over the network in packets.
17. The method of Claim 16, wherein the packets are in IP protocol format.
22. The method of Claim 13, wherein the accounting data is generated based at least in part on at least one time period.
24. A computer program device comprising:
a computer program storage device readable by a digital processing apparatus; and
a program on the program storage device and including instructions executable by the digital processing apparatus, the program comprising:
computer readable code means for billing a user for the provision of digitized packetized audio or video content from the Internet via a wireless network path to a user terminal associated with the user, including at least one of:
means for receiving a request for a piece of content from the user, the means for billing generating accounting data based at least in part on the request;
means for generating accounting data based at least in part on a number of packets sent to the user via the path;
means for generating accounting data based at least in part on a content subscription for content; and
means for generating accounting data based at least in part on a type of user terminal.
26. The computer program device of Claim 24, wherein the means for billing generates accounting data based at least in part on a number of packets sent to the user via the path.
29. The computer program device of Claim 28, wherein the subscription is based at least in part on a user profile.
30. The computer program device of Claim 24, wherein the network path has a data transmission rate of at least one Mbps.
31. The computer system of Claim 1, wherein the network path has a data transmission rate of at least one Mbps.

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32. The method of Claim 12, wherein the network path has a data transmission rate of at least one Mbps.

33. The computer system of Claim 1, wherein the user terminal is established by a device type, the server detecting the device type and providing content according thereto.

34. The method of Claim 12, wherein the user terminal is established by a device type, the device type dictating the content provided thereto.

35. The computer program device of Claim 24, further comprising computer readable code means for determining a user terminal device type, the device type dictating the content provided to the user terminal.

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APPENDIX B - EVIDENCE

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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APPENDIX C - RELATED PROCEEDINGS

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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